

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Somos, Inc. Petition for)	
)	
Declaratory Ruling)	WC Docket No. 95-155
)	WT Docket No. 08-7
Regarding Registration of)	
)	
Text-Enabled Toll-Free Numbers)	

COMMENTS OF TEN DIGIT COMMUNICATIONS LLC

Gary G. Brandt
President
TEN DIGIT Communications LLC
50 Blue Ridge Dr.
Simsbury, CT 06089
Mobile: (860) 986-9100
Call or Text: (888) 512-8398 (TEXT)
gary.brandt@tendigittext.com

December 2, 2016

TABLE OF CONTENTS

	Page
INTRODUCTION AND EXECUTIVE SUMMARY	1
THE TOLL-FREE TEXTING MARKETPLACE	3
TITLE II REGULATION OF MESSAGING SERVICES	6
SOMOS, INC. WHITE PAPER AND THE TOLL-FREE REGISTRY.....	9
SOMOS, INC. MONOPOLY OF TOLL-FREE SERVICES	11
CONCLUSION	13

INTRODUCTION AND EXECUTIVE SUMMARY

TEN DIGIT Communications LLC (“TEN DIGIT”) is a nationwide provider of landline and toll-free texting services to businesses with a primary customer focus on call centers. Formed in 2013, TEN DIGIT continues to provide the services in the competitive landline and toll-free texting marketplace.¹ TEN DIGIT has developed a patent-pending SMS text messaging platform to provide cost effective, innovative and transformational communications solutions for contact centers and enterprise customers (using existing landline and toll-free numbers), resulting in improved customer and agent satisfaction as well as substantial efficiency gains. These service benefits have been validated by Fortune 500 enterprises and enterprise contact centers are primary users of toll-free numbers.

On October 28, 2016, Somos, Inc. (“Somos”), the Toll-Free Number Administrator, petitioned the Federal Communications Commission (“Commission”) for a declaratory ruling that any provider of texting services to toll-free numbers may not do so without the explicit authority of the Responsible Organization (“Resp Org”) with assignment and routing authority for that toll-free number (“Petition”) attaching a white paper to support its Petition (“White Paper”).² On November 4, 2016, the Commission issued its Public Notice soliciting comments from the public and the industry regarding the Petition.³

Toll-free texting, and texting to any wireline number for that matter, is similar to texting between any two wireless communications devices. The difference is that the toll-free or wireline

¹ See www.tendigitcommunications.com

² Petition of Somos, Inc. for a Declaratory Ruling Regarding Registration of Text-Enabled Toll-Free Numbers, CC Docket 95-155, October 28, 2016 and White Paper, *Texting with Toll-Free Numbers*, September 29, 2016.

³ DA-1259, Wireline Competition Bureau Seeks Comment on Somos, Inc. Petition for Declaratory Ruling Regarding Registration of Text-Enabled Toll-Free Numbers, WC Docket No. 95-155, WT Docket No. 08-7, November 4, 2016.

telephone number subscriber sees the text via a cloud-based software application or application programming interface (“API”) on a smart phone, computer or tablet. The receiver can interact and manually or automatically reply. The technology is, to be frank, impressive. Regardless, it is almost indistinguishable from traditional wireless to wireless messaging which, to date, has thrived without more than limited government intervention (i.e., spamming rules). A quick search on the Internet demonstrates that there are numerous providers offering wireline and toll-free texting services. This lengthy list includes some of America’s most prominent communications service providers as well as many smaller companies including many who are also toll-free Resp Orgs.

On August 28, 2015, Twilio, Inc. (“Twilio”) filed a petition for an expedited declaratory ruling with the Commission asking that the Commission treat messaging as Title II services under the Communications Act of 1934 as amended (“Act”).⁴ While the Commission has not yet acted on the petition, it is clear from the comments and reply comments submitted by the industry that such regulation is unwarranted and unnecessary. One could cut and paste comments in that proceeding and apply them here. Further regulation in response to the Somos Petition is also unwarranted and unnecessary.

Somos, the monopoly provider of toll-free number administration and routing, is asking the government to strengthen and extend its chokehold on toll-free services. As Somos enjoys both their privileged position and an effective lock on the toll-free database and associated record and administration queries, the toll-free marketplace remains both moribund and needlessly expensive. TEN DIGIT’s target call center customers have been overpaying for the use of toll-free numbers for many years. There are examples of the good that can happen in a marketplace

⁴ Petition for Expedited Declaratory Ruling of Twilio, Inc. Stating That Messaging Services Are Title II Services, WT Docket No. 08-7, August 28, 2015.

when regulation is relaxed. The rapid decline in local number portability (“LNP”), signaling system seven (“SS7”) and, not surprisingly, toll-free query rates when those markets were deregulated several years ago is worth attention. TEN DIGIT has developed a similarly transformative call center service platform. The recent shift from Neustar to Telcordia as the LNP administrator via competitive bid leads one to question why Somos’ provision of its database services is not open to the same competitive process.

For these reasons, as TEN DIGIT will expand in further detail in these comments, the Somos, Inc. Petition should be denied. Further, we support the deregulation and detariffing of Somos. As with other similar services the Commission oversees, the services that Somos currently provides should be subject to an open and public competitive bid and, as a result, hand toll-free numbers off to the prevailing neutral third party.

THE TOLL-FREE TEXTING MARKETPLACE

Somos’ Petition was filed long after the proverbial horse left the barn. 92 percent of American adults carry text-enabled smartphones and 98 percent of smartphone users regularly receive and send texts. Text messaging offers the single most effective channel for driving business customer engagement and businesses are recognizing it as so. Today, more than 150 million texts are sent to landline and toll-free numbers **daily** even though some of those numbers may not even be text-enabled. Today’s savvy business customer is eschewing clunky voicemail and unread email in favor of this new means to engage.

How does landline and toll-free texting work? You can’t receive a text on a phone without a screen or keyboard? Again, it’s fairly simple. If customers call into a text-enabled business number, the phone rings with no interference. However, when a customer sends a text message to the same number, the business texting software sends the message wherever the company wants

it to go. Companies can have incoming text messages sent to any platform they wish, anywhere they want, and view it on a laptop, desktop, tablet, or mobile phone. The text is carried via the wireless network to a cloud-based software solution which is updated constantly to make sure texts get to the right destination every time.⁵

Several of America's most prominent technology companies have already embraced enabling toll-free and landline numbers as a means to reduce customer costs and put them in contact with an evolving communications marketplace. By its Petition, Somos attempts to slow or stop that speeding race car in its tracks by layering this already seamless process with unnecessary regulatory yellow flags.⁶

In its White Paper in support of its Petition, Somos makes the bold claim that the toll-free texting market is a failed market in need of immediate government correction. Its claim is based on an assumption that all toll-free texts have to proceed through one aggregator in order for the messages to reach their intended destination. Somos does nothing in its White Paper to support its claim of a market failure in any way.

Government economists often look at a markets and will advise closer scrutiny if they discover evidence, for example, of an economic disparity caused by the existence of a single market producer (e.g., in the toll-free market, an aggregator). In the event an economist observes excesses in production costs (also known as rents) that economist would investigate the prices a

⁵ Connecting with Text, The Shift to Landline and Toll-Free Business Texting, AT&T Market Survey, January 2016. AT&T is deeply invested in this technology and actively markets it to its business customer base. Several passages from AT&T's survey were taken verbatim to support these comments here. See more at: <https://www.business.att.com/content/whitepaper/business-texting-market-survey-report.pdf>.

⁶ For more information on NASCAR race flags see http://www.nascar.com/en_us/sprint-cup-series/nascar-nation/nascar-edu/rules-guy/nascar-racing-flags.html

consumer pays for the service. What are the long term trends on those prices? Is either the wholesale or retail marketplace subject to monopoly pricing?

Given that Somos is seeking to be the gate keeper of the toll-free texting marketplace, what do we know about those monopoly rents and the monopoly pricing of the toll-free texting marketplace? We have no idea. Unsurprisingly, these answers eluded the authors of Somos' White Paper. The White Paper cites a number of economic sources which explain what happens when a monopoly has sole control of a market place, yet hardly proves the relationship between the toll-free texting marketplace and the research they cite. Instead, the White Paper relies on skeletal and unconvincing pricing data to draw its frankly specious conclusions.

Those same economists might wonder if the technology supporting the market is somehow affected by its current construct? In other words, if there truly were a market failure, inefficiency in message transmission might be self-evident. Competition tends to push less competent players out of the market. Somos' White Paper provides no supporting evidence as to the current levels of inefficiency in message transmission.

Lastly, a good indicator to any regulator that the market is failing is the number of customer complaints. Recently, the Commission rightly did take some action with regard to texting by strengthening consumer protections against unwanted autodialed or other unsolicited texts.⁷ The Commission was bombarded with public complaints and took the necessary steps to mitigate the damage. Tellingly, Somos' White Paper lacks details on the number of complaints received by regulators regarding messaging to landline and toll-free numbers. The simplest reason? There is

⁷ See <https://transition.fcc.gov/cgb/consumerfacts/canspam.pdf>

no problem. Were this a pressing problem, supporting data would be simple to provide and compelling to an argument. The facts at hand tell a different story. A business or individual that wishes to activate its/her number for texting has to do so affirmatively. The person sending a text to those destinations has to do so willingly as well. In this relationship, there is little incentive for either party to engage in a practice that would result in a complaint to a third party. Further, as TEN DIGIT can attest, it is in the provider's best interest to contact the customer directly to either confirm they wish to activate their number for texting or use a document like a letter of authorization ("LOA") or contract to confirm that is the case. The LOA or standard contract ensures there is a verifiable paperwork trail to confirm the customer's intent in case of a future dispute.

Despite 21 pages, Somos' White Paper fails to hit its intended mark and makes extraordinary claims about a market failure without even ordinary data to support its case. A regulator should look with suspicion on such a request. As a final, hypocritical point, Somos alleges a monopoly in order to consolidate its own.

TITLE II REGULATION OF MESSAGING SERVICES

Somos proposes that the Commission regulate a service that most Americans use millions of times a day without complaint. The Petition comes in the footsteps to Twilio, Inc.'s petition of 2015 through which they asked the Commission to bring messaging under Title II of the Act in order to prevent wireless providers from blocking or choking texts originating with Twilio's wholesale customers.⁸

Twilio makes software that allows its customers to automatically send text messages to

⁸ Twilio, Inc. Petition for Expedited Declaratory Ruling

recipients. Unfortunately, Twilio was, and continues to be, victimized by several text spamming companies that send unsolicited text advertisements to consumers. Wireless carriers filter this spam to save wholesale customers money who might be in a contractual arrangement that mandates they pay per text. Naturally, wireless carriers also protect end-users who find this spam disruptive and annoying.

Twilio argued that the wireless carriers' efforts to protect their networks and customers violate Sections 201 and 202 of the Act. Twilio argues that a text message is like a voice phone call or a "telecommunications" service, meaning a service offered for a fee directly to the public involving "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." This is different than, for example, an electronic mail which the Commission does not regulate. In essence, Twilio argued that wireless providers merely acting in the public interest violate federal law.

As many commenters in the Twilio proceeding point out, to no one's surprise, text messages are in fact "information" services. Information services are defined in federal rules as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications." Unlike a standard voice call, text messages may undergo protocol conversion to communicate between carriers or between a carrier and the Internet. A text, for example, may originate as an email sent to a phone and converted from Internet email protocol to a format or protocol used for text message transmission. In short, the storage-and-retrieval nature of text delivery, coupled with the possibility of changes in form and content between sender and delivery, means texts are an information service governed not by Title II but by Title I of the Act. It is no stretch to conclude that, logically, texts to landlines

and toll-free numbers are information services as well. Subjecting them to some needless bureaucratic registry or approval of a Resp Org under the auspices of Commission rules constitutes Title II regulation and is well outside of the Commission's statutory authority.⁹

CTIA – The Wireless Association (“CTIA”), in its opposition comments to Twilio’s petition, stated that “wireless industry efforts to combat spam and unwanted messages have been remarkably effective given the scope of the problem, as the level of messaging spam is minimal in comparison to email. Verizon, AT&T, Sprint and T-Mobile et al have spoken. The Commission has taken notice of the voices of these large companies and has commended “carrier efforts to implement protections against unwanted text messages in [the Commission’s] recent order under the Telephone Consumer Protection Act (“TCPA”) on robocalls and unwanted text messages.”¹⁰

Primarily by using voluntary industry guidelines, America’s wireless carriers have built a robust texting market that delivers almost two trillion unadulterated text messages each year. The Commission has little basis in law or policy to supplant messaging guidelines with its own bureaucratic input under Title II nor should it do so in response to Somos’ Petition.

Commissioner O’Rielly summed up the ponderous and antiquated nature of Title II in the Net Neutrality proceeding by stating that Title II is “an inappropriate framework for today’s dynamic technologies. Title II includes a host of arcane provisions.” Commissioner O’Rielly’s analysis could be equally applied to any thought of binding text messaging with these legacy regulatory chains. In the absence of a large volume of consumer complaints and the lack of a market failure, the government is compelled to let the private market work. Not only is messaging

⁹ For an excellent summary, see Professor Daniel Lyons’ blog of December 22, 2015 at Techpolicydaily.com here: <http://www.techpolicydaily.com/internet/how-should-the-fcc-classify-text-messages/>

¹⁰ Opposition of CTIA – The Wireless Association, WT Docket No. 08-7, November 20, 2015

itself competitive but messaging to wireline and toll-free telephone numbers is as well. The idea that a registration is needed for the latter is ludicrous.

SOMOS, INC.'S WHITE PAPER AND THE TOLL-FREE REGISTRY

As an exhibit to its Petition, Somos included a White Paper written for it by QSI Consulting.¹¹ The White Paper is professionally done and includes many facts which accurately portray the vibrancy of the wireless messaging, landline and toll-free texting marketplace. The White Paper hits the nail on the head when it discusses the growth in the toll-free texting marketplace and the benefits the numerous providers in the space have brought to consumers.

The White Paper then goes on to argue that the existence of one toll-free text aggregator, ZipWhip, has so distorted the toll-free texting marketplace that Commission or, perhaps, Department of Justice (“DOJ”) Anti-Trust action is required.¹² A marketplace disruption of that magnitude would be self-evident, yet Somos’ White Paper still fails to prove its existence. In fact, Somos even cites another toll-free texting aggregator that performs exactly the same process as ZipWhip - a company called HeyWire.

HeyWire’s website is instructive. They claim that “[i]n 2008, HeyWire launched the world’s first implementation of ‘mobile cloud messaging’. Instead of being associated with a physical mobile device, an SMS message could be associated with the identity of the individual (via the phone number), thus allowing text messages to be sent and received from any device, anywhere and at any time. HeyWire’s first product based on this innovation was a consumer messaging app available on the Apple iOS and Android platforms that enabled users to move

¹¹ See <http://www.qsiconsulting.com>

¹² See <https://www.zipwhip.com/about/story>

seamlessly between their mobile phone, tablet, PC or any other device with an IP connection.”¹³ TextPower provides similar services.¹⁴

While the White Paper does a credible job explaining the economic term “market failure” and the conditions under which regulators may wish to investigate a potential anti-trust violation, it provides limited and unconvincing examples that any of this is taking place in the toll-free texting arena.

Somos argues that a toll-free registry, acting as a sort of toll-booth operated by Resp Orgs, would somehow eliminate this mythical toll-free texting monopoly. It then goes into detail explaining the structure of the registry and the “benefits” it would bring to the market. But, Somos can’t seem to bridge the gap between its claim of a market failure and how any of this would solve that alleged “problem.” Reading between the lines, it seems that the registry discussion and Somos’ insistence that it is a panacea is basically a grudge match between Somos, Inc. and ZipWhip.

Further, not to be left out of the picture, Somos feels compelled to be a gatekeeper as well. It requires that those using the registry to go to training and, naturally, pay a significant fee to do so.¹⁵

Noting the close relationship between Somos and the Resp Orgs, it would not at all be surprising to see Somos enlisting a crew of Resp Orgs parroting Somos’ talking points.¹⁶ Claims that something is wrong with the toll-free texting market because Resp Orgs don’t know that

¹³ See <https://www.heywire.com/company/about-us/>

¹⁴ See <http://www.textpower.com/public/company/partners/>

¹⁵ See <https://www.somos.com/become-service-registrar>

¹⁶ See <https://ecfsapi.fcc.gov/file/60001529785.pdf>

someone is texting to a toll-free number is hardly a reason to regulate the services. The opinion of the end-user customer of that toll-free number is all that is relevant. As stated earlier, toll-free text providers go to extraordinary lengths to make sure the subscriber of the toll-free number has authorized a provider to open their number for texting. This can be done simply through standard business communication and the Resp Org or Somos do not need to be involved at all.

SOMOS, INC.'S MONOPOLY ON TOLL-FREE SERVICES

The communications industry has benefitted greatly from the deregulation of LNP, SS7 and toll-free query services formerly provided in some manner by the Regional Bell Operating Companies (“RBOCs”). Both are proof that database services have been, and can be, migrated to modern, efficient IT platforms accessed by advanced Internet Protocol techniques.

In 1993, the Commission mandated that the RBOCs develop a centralized database system to allow toll-free customers to change their service providers without having to change their numbers. The Commission also required the RBOCs to offer the service as a common carrier service, under tariff, to ensure that they offer it on a non-discriminatory basis and at reasonable rates. In response, the BOCs created SMS 800, Inc. which has recently renamed itself Somos. The RBOCs offer access to the database through the Somos’ SMS/800 tariff.¹⁷ The tariff sets forth the regulations, rates, and charges applicable to Somos services as well as features and functions and establishes Resp Org and Service Control Point (“SCP”) responsibilities and eligibility criteria.¹⁸ A single database for toll-free numbers is a necessity for many obvious operational reasons. However, there is absolutely no reason the database cannot be opened up for competitive bid. As we have seen with the the other industry databases, the Commission sees value in

¹⁷ See <https://portal.somos.com/ResoPDF/PublicDocuments/SMS800FunctionsTariff.pdf>

¹⁸ SCPs ensure industry connectivity to the SMS/800 database by providing trunking and signaling functions.

competition in those communications database services.

For twenty-three years this not-for-profit has built a monopoly in the provision of toll-free number and query services. Somos still relies on antiquated technology and continues to use its filed rate doctrine power to assess unreasonably high rates for services. Ironically, while modernizing their market presence by creating a board of directors composed of members more representative of the industry and a slick new website and corporate name, from a regulatory perspective, Somos remains in a pre-Act, circuit switched world to thus retain its stranglehold on these services while asking the Commission to expand its authority unnecessarily. In fact, the Commission should not only reject the Petition but it should open a proceeding to investigate why the pricing for toll-free database and query services provided by Somos to the industry remains high.

For years now, Somos has maintained a federal tariff that currently assesses Resp Orgs \$.0996 per toll-free number per month for “customer record administration.” In point of fact, that number is an increase over the rate published in Somos’ federal tariff in 2015 and has remained at a similar level for over six years. Somos will point to data showing that the customer record administration rate has declined by over one third since the tariff’s inception. However, there were significantly fewer toll-free numbers in service in 1993. Reducing the rate on an ever growing number of units billed is a common monopoly sleight of hand.

Somos states that over 40 million toll-free numbers are in service. This translates to almost \$4 million in monthly revenue and almost \$50 million in revenue annually. For what? Maintaining a database? As anyone with even rudimentary knowledge of information technology and advanced information services will tell you, a virtual database with access to providers via internet protocol technology would be infinitely cheaper and would have the happy result of driving down the

usurious rates toll-free consumers pay as provider's pass through these Somos costs directly to the end-users. Further, in a highly competitive IT hardware and software market, one would expect Somos' capital expenditures to benefit accordingly. We feel it is unlikely that Somos will notify the Commission of a reduction in rates in their tariff when it files revisions in the upcoming year.

CONCLUSION

Somos, Inc. bears the burden of demonstrating the toll-free texting market has failed. Somos has not met that burden in its Petition and White Paper. Therefore, the Commission has no choice but to deny the Petition. Further, the scrutiny should be shifted to Somos itself and its continued monopoly provision of toll-free database services.

Respectfully submitted,

Gary G. Brandt
President
TEN DIGIT Communications LLC
50 Blue Ridge Dr.
Simsbury, CT 06089
Mobile: (860) 986-9100
Call or Text: (888) 512-8398 (TEXT)
gary.brandt@tendigittext.com

December 2, 2016